

Decision **ALTERNATE DRAFT DECISION OF COMMISSIONER BROWN**
(Mailed 4/21/2005)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Comply with the
Mandates of Senate Bill 1563 regarding
deployment of Advanced Telecommunications
Technologies.

Rulemaking 03-04-003
(Filed April 3, 2003)

**ORDER ADOPTING REPORT
IN FULFILLMENT OF SENATE BILL 1563**

I. Summary

This decision releases the report of the Commission entitled *Broadband Deployment in California*, attached to this decision as Attachment A. This decision and report satisfy the requirements of Senate Bill (SB) 1563 (Ch. 674, Stats. 2002).

The report finds generally that advanced telecommunications technologies are increasingly employed, with concomitant effects on the state's economy and the vitality of local communities. California leads the nation in the deployment of broadband services and usage, and yet poor, minorities, and rural people do not use broadband as the urban, well-educated, and wealthier residents do. Accordingly, we find that California should consider policies in several key areas. The report also finds that the widespread adoption of Voice Over Internet Protocol services and other innovative services is likely to spur the deployment of broadband networks in California but poses significant challenges to

California's public programs including the California Teleconnect Fund and the Deaf and Disabled Telecommunications Program. Finally, the report discusses several ways to ensure broadband services are available to communities such as lower-income Californians, residents of rural areas, and the disabled community.

II. Background

The Commission opened this rulemaking in order to satisfy the requirements of SB 1563 (codified in Public Utilities Code §709.3). The Commission investigated the issues in this proceeding by soliciting written comments, holding workshops and community meetings, and conducting independent research on a number of issues affecting the deployment of broadband in California. The Commission held a prehearing conference on September 15, 2003 at which parties discussed the scope of issues and the schedule in this proceeding. The Commission also conducted a full panel hearing on February 8, 2005 at which parties and members of the community addressed the draft report in this proceeding, which was released on February 1, 2005. This decision and report have failed to comply with the statute's requirement that the report be submitted to the legislature by December 31, 2004.

III. Assigned Commissioner and Administrative Law Judge

Susan Kennedy is the Assigned Commissioner in this proceeding. Kim Malcolm is the Assigned Administrative Law Judge.

IV. Comments on Proposed Decision and Alternate Decision

The Assigned Commissioner issued a draft decision for public comment on February 1, 2005. Numerous parties filed comments on the draft order and accompanying draft report. Opening comments were filed February 15, 2005. Reply comments were filed February 22, 2005. The Commission made changes

to the draft report in response to the parties' written comments and presentations at the full panel hearing.

The Alternate Draft Decision was issued for public comment on April 21, 2005. Comments were received from CalCLAD, Covad, CCTPG & LIF, SBC, Verizon, the Small LECs, SureWest, TURN, MCI, Disability Rights Advocates, Great Valley Center, and CCTA. Those comments were carefully considered and, where appropriate, were incorporated into the report. Reply comments were received by various parties and addressed where appropriate.

Confusingly, the Small LECs cited unrelated issues from different paragraphs which they represented were from the same paragraph of the report in their comments.

Significantly, several parties commented the section regarding broadband utilization by various groups should be included in the report. Accordingly, it has been included.

SBC commented that several citations in footnotes were unclear. Those citations have been clarified.

In their comments SBC, Verizon, SureWest, CCTA and the small LECs expressly mention they believe DSL to be an interstate service over which the CPUC has little or no jurisdiction. We find the characterization particularly telling in light of the carriers' unwillingness to make DSL available to California's schools, libraries and community based organizations via the California Teleconnect Fund. We can think of no situation where a subsidized service is more inherently local than its provision to our state's schools, libraries and community based organizations. In this context, characterizing subsidized DSL as a preempted interstate subject area is a fairly extreme interpretation. It is precisely the neighborhood-based benefits of DSL and other broadband

technologies with which this report is concerned. Nothing in the FCC's designation of DSL as an interstate telecommunications service prevents the state from subsidizing half of its price (it is significant and noteworthy that there is no attempt to provide a subsidy of half of the economic cost of the service) for underserved and needy communities in the state where the service is currently available. Furthermore, all the commenting carriers were noticed in T.16782, which expressly referenced the creating legislation. At that time they elected to not comment.

Findings of Fact

1. The attached report fulfills the requirements of SB 1563.
2. The Commission conducted its SB 1563 inquiry by soliciting comments from, and considering the comments of, a wide array of community groups, individuals, service providers and other parties.

Conclusions of Law

1. The Commission should adopt the report attached as Attachment A as satisfying the requirements of Public Utilities Code §709.3.
2. The Executive Director should be directed to submit copies of the attached report to the Governor and the California Legislature in fulfillment of Public Utilities Code §709.3.

IT IS ORDERED that:

1. The attached report is adopted in fulfillment of Public Utilities Code §709.3, as set forth herein.
2. The Executive Director shall submit copies of the attached report to the Governor and California State Legislature in fulfillment of Public Utilities Code §709.3.
3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Attachments to Commissioner Brown' alternate decision are available on the Commission website at

http://www.cpuc.ca.gov/static/aboutcpuc/commissioners/02brown/050421_alternate+attachments.htm

ATTACHMENT A